



House of Representatives

File No. 676

General Assembly

February Session, 2000

(Reprint of File No. 440)

Substitute House Bill No. 5059
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
April 28, 2000

An Act Concerning Hunting Safety.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (a) As used in this section:
- 2 (1) "Criminal negligence" shall have the same meaning as "criminal
- 3 negligence", as defined in section 53a-3 of the general statutes;
- 4 (2) "Hunting" shall have the same meaning as "hunting", as defined
- 5 in section 26-1 of the general statutes;
- 6 (3) "Loaded hunting implement" means (A) a rifle or shotgun with a
- 7 live round in the chamber or in a magazine which is attached to such
- 8 rifle or shotgun, a muzzle-loaded firearm with the percussion cap in
- 9 place, or a flintlock firearm with powder in the pan, (B) a bow and
- 10 arrow with an arrow notched on the bow, (C) a drawn crossbow with a
- 11 bolt in place, or (D) a high velocity air gun that is charged with a
- 12 projectile in the chamber or in a magazine that is attached to such air
- 13 gun; and

14 (4) "Serious physical injury" shall have the same meaning as "serious
15 physical injury, as defined in section 53a-3 of the general statutes.

16 (b) (1) A person is guilty of negligent hunting in the first degree
17 when, with criminal negligence while hunting, such person discharges
18 a loaded hunting implement and thereby causes the death of another
19 person.

20 (2) Negligent hunting in the first degree is a class D felony.

21 (c) (1) A person is guilty of negligent hunting in the second degree
22 when, with criminal negligence while hunting, such person violates
23 any provision of section 26-85 of the general statutes or discharges a
24 loaded hunting implement and thereby causes the serious physical
25 injury of another person.

26 (2) Negligent hunting in the second degree is a class A
27 misdemeanor and any person found guilty under subdivision (1) of
28 this subsection shall be fined not less than four hundred dollars.

29 (d) (1) A person is guilty of negligent hunting in the third degree
30 when such person, while hunting, (A) discharges a firearm at a time of
31 day when hunting is not permitted, (B) discharges a firearm from a
32 vehicle, (C) hunts while the person's license to hunt is suspended, (D)
33 hunts out of season or on a Sunday, or (E) discharges a firearm so as to
34 cause the projectile to strike or enter into any building occupied by
35 people or domestic animals or used for storage of flammable or
36 combustible materials.

37 (2) Negligent hunting in the third degree is a class B misdemeanor
38 and any person found guilty under subdivision (1) of this subsection
39 shall be fined not less than two hundred dollars.

40 (e) (1) A person is guilty of negligent hunting in the fourth degree
41 when such person, while hunting, (A) hunts without purchasing a
42 license, permit or stamp or other permission required by law, (B) is in
43 possession of a loaded hunting implement at a time of day when

44 hunting is not allowed, (C) hunts with or discharges a firearm less than
45 two hundred fifty feet from any building occupied by people or
46 domestic animals or used for storage of flammable or combustible
47 materials, or less than one hundred twenty-five feet from any such
48 building while hunting in tidal water areas, unless written permission
49 of the owner of such building has been obtained, or (D) hunts from or
50 discharges a hunting implement from or across a public highway.

51 (2) Negligent hunting in the fourth degree is a class C misdemeanor.

52 (f) Any person who is convicted of a violation of any provision of
53 subsection (b), (c) or (d) of this section or subsection (b) of section 53-
54 206d of the general statutes, as amended by this act, within five years
55 of a previous conviction for violation of this section shall be considered
56 a persistent negligent hunter. Upon such second conviction within five
57 years, a persistent negligent hunter shall be fined an amount that is not
58 less than twice the minimum fine provided for the second violation
59 and shall be subject to penalties provided for the next more serious
60 degree of negligent hunting under subsection (b), (c) or (d) of this
61 section or subsection (b) of section 53-206d of the general statutes, as
62 amended by this act.

63 (g) Any fine imposed for a conviction under subsection (b) or (c) of
64 this section or subsection (b) of section 53-206d of the general statutes,
65 as amended by this act, shall be deposited in the Criminal Injuries
66 Compensation Fund established pursuant to section 54-215 of the
67 general statutes. Any fine imposed for a conviction under subsection
68 (d) or (e) of this section shall be deposited in the Conservation Fund
69 established under section 22a-27h of the general statutes for land
70 management or acquisition of hunting easements.

71 (h) (1) The Commissioner of Environmental Protection may suspend
72 the hunting license of any person convicted under subsection (b), (c),
73 (d) or (e) of this section or subsection (b) of section 53-206d of the
74 general statutes, as amended by this act for: (A) Indefinitely upon
75 conviction of negligent hunting in the first degree or upon conviction

76 of any violation of subsection (b) of section 53-206d of the general
77 statutes, as amended by this act; (B) up to ten years upon conviction of
78 negligent hunting in the second degree; (C) up to five years upon
79 conviction of negligent hunting in the third degree; and (D) up to three
80 years upon conviction of negligent hunting in the fourth degree.

81 (2) Any person arrested for a violation of subsection (b), (c) or (d) of
82 this section or subsection (b) of section 53-206d of the general statutes,
83 as amended by this act, except as provided in section 26-85 of the
84 general statutes shall surrender any firearm, bow, crossbow, bolt or
85 high velocity air gun in the person's possession while hunting at the
86 time of the alleged violation. Such property shall be confiscated at the
87 time of arrest by a police officer or conservation officer. Upon nolle or
88 dismissal of charges or acquittal of such person of such violation, such
89 property shall be returned to the person within five business days and
90 in the same condition as when the firearm, bow, crossbow or high
91 velocity air gun was surrendered. Notwithstanding the provisions of
92 sections 54-33g and 54-36a of the general statutes, the property shall be
93 turned over to the Commissioner of Environmental Protection upon
94 conviction of such person for such violation. Said commissioner shall
95 (A) retain the property for use by personnel of the Department of
96 Environmental Protection, (B) convey the property to the
97 Commissioner of Administrative Services for sale at public auction, the
98 proceeds of which shall be credited to the Criminal Injuries
99 Compensation Fund established pursuant to section 54-215 of the
100 general statutes, or (C) destroy the property.

101 (i) Possession by any person of a loaded hunting implement while at
102 or entering or leaving an area where a reasonable person would
103 believe the objective was to take wildlife shall be prima facie evidence
104 of hunting, except that a person may, one hour before sunrise during
105 the regulated deer and turkey firearms hunting seasons, be in
106 possession of a loaded rifle or shotgun, as defined in subdivision (3) of
107 subsection (a) of this section, provided a live round is not in the
108 chamber of the rifle or shotgun.

109 Sec. 2. Subsection (g) of section 26-31 of the general statutes is
110 repealed and the following is substituted in lieu thereof:

111 (g) Any holder of a hunting license which has been suspended
112 under section 26-61, for a hunting safety violation as identified by the
113 commissioner in the Hunting and Trapping Guide published annually
114 by the Department of Environmental Protection or any holder of such
115 a license which has been suspended under section 26-62 shall
116 successfully complete a remedial hunter education course formulated
117 by the Commissioner of Environmental Protection and show proof that
118 the hunter has successfully completed a conservation education-
119 firearms safety course or its equivalent, as deemed by the
120 commissioner, prior to any reinstatement of such license.

121 Sec. 3. Section 53-206d of the general statutes is repealed and the
122 following is substituted in lieu thereof:

123 (a) (1) No person shall carry a pistol, revolver, machine gun,
124 shotgun, rifle or other firearm, which is loaded and from which a shot
125 may be discharged, upon his person [(1)] (A) while under the influence
126 of intoxicating liquor or any drug, or both, or [(2)] (B) while the ratio of
127 alcohol in the blood of such person is ten-hundredths of one per cent
128 or more of alcohol, by weight.

129 [(b)] (2) Any person who violates any provision of this [section]
130 subsection shall be guilty of a class B misdemeanor.

131 (b) (1) No person shall engage in hunting while under the influence
132 of intoxicating liquor or any drug, or both, or while impaired by the
133 consumption of intoxicating liquor. A person shall be deemed under
134 the influence when at the time of the alleged offense the person (A) is
135 under the influence of intoxicating liquor or any drug, or both, or (B)
136 has an elevated blood alcohol content. For the purposes of this
137 subdivision, "elevated blood alcohol content" means (i) a ratio of
138 alcohol in the blood of such person that is ten-hundredths of one per
139 cent or more of alcohol, by weight, or (ii) if such person has been
140 convicted of a violation of this subsection, a ratio of alcohol in the

141 blood of such person that is seven-hundredths of one per cent or more
142 of alcohol, by weight. A person shall be deemed impaired when at the
143 time of the alleged offense the ratio of alcohol in the blood of such
144 person was more than seven-hundredths of one per cent of alcohol, by
145 weight, but less than ten-hundredths of one per cent of alcohol, by
146 weight.

147 (2) Any person who violates any provision of this subsection shall
148 be guilty of a class A misdemeanor.

149 (3) Enforcement officers of the Department of Environmental
150 Protection are empowered to arrest for a violation of the provisions of
151 this subsection.

152 Sec. 4. Subsection (a) of section 15-140q of the general statutes is
153 repealed and the following is substituted in lieu thereof:

154 (a) If any person, having been placed under arrest for violating
155 subsection (b) of section 53-206d, as amended by this act, or for
156 operating a vessel upon the waters of this state while under the
157 influence of intoxicating liquor or any drug, or both, and thereafter,
158 after being apprised of his constitutional rights, having been requested
159 to submit to a blood, breath or urine test at the option of the police
160 officer, having been afforded a reasonable opportunity to telephone an
161 attorney prior to the performance of such test and having been
162 informed that evidence of such refusal shall be admissible and may be
163 used against him in any criminal prosecution, refuses to submit to the
164 designated test, the test shall not be given; provided, if the person
165 refuses or is unable to submit to a blood test, the police officer shall
166 designate the breath or urine test as the test to be taken.

167 Sec. 5. Subsection (a) of section 15-140r of the general statutes is
168 repealed and the following is substituted in lieu thereof:

169 (a) In any criminal prosecution for violation of section 15-140l or 15-
170 140n, [or] subsection (a) of section 15-133 or subsection (b) of section
171 53-206d, as amended by this act, evidence respecting the amount of

172 alcohol or drug in the defendant's blood or urine at the time of the
173 alleged offense, as shown by a chemical analysis of the defendant's
174 breath, blood or urine shall be admissible and competent provided: (1)
175 The defendant was afforded a reasonable opportunity to telephone an
176 attorney prior to the performance of the test and consented to the
177 taking of the test upon which such analysis is made; (2) a true copy of
178 the report of the test result was mailed to or personally delivered to the
179 defendant within twenty-four hours or by the end of the next regular
180 business day, after such result was known, whichever is later; (3) the
181 test was performed by or at the direction of a law enforcement officer
182 according to methods and with equipment approved by the
183 Department of Public Health and was performed by a person certified
184 or recertified for such purpose by said department or recertified by
185 persons certified as instructors by the Commissioner of Public Health.
186 If a blood test is taken, it shall be on a blood sample taken by a person
187 licensed to practice medicine and surgery in this state, a qualified
188 laboratory technician, an emergency medical technician II or a
189 registered nurse; (4) the device used for such test was checked for
190 accuracy at the beginning of each workday and no later than the end of
191 each workday by a person certified by the Department of Public
192 Health; (5) an additional chemical test of the same type was performed
193 and the device was checked for accuracy by a person certified or
194 recertified by the Department of Public Health, at least thirty minutes
195 after the initial test was performed, provided the results of the initial
196 test shall not be inadmissible under this subsection if reasonable efforts
197 were made to have such additional test performed in accordance with
198 the conditions set forth in this subsection and such additional test was
199 not performed or was not performed within a reasonable time, or the
200 results of such additional test are not admissible for failure to meet a
201 condition set forth in this subsection; and (6) evidence is presented
202 which demonstrates that the test results and the analysis thereof
203 accurately reflect the blood alcohol content at the time of the alleged
204 offense.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Minimal Cost and Potential Minimal Revenue Gain (Criminal Injuries Compensation Fund, Conservation Fund)

Affected Agencies: Judicial Department, Department of Environmental Protection

Municipal Impact: None

Explanation

State Impact:

This bill could result in minimal cost and minimal revenue gain to the state by establishing the crime of negligent hunting. This bill establishes different degrees for negligent hunting, including class A, B and C misdemeanors and a class D felony. The bill also establishes a new crime of engaging in hunting while under the influence of or impaired by drugs or alcohol and makes it a class A misdemeanor. This could result in a cost to the criminal justice system. The extent to which this may occur is unknown, but is anticipated to be minimal. Under the bill, any revenue from fines collected related to the class D felonies or class A misdemeanors would be placed into the Criminal Injuries Compensation Fund. Revenue from fines collected related to the class B or C misdemeanors would be placed into the Conservation Fund. The extent of any revenue gain is unknown, but is anticipated to be minimal.

In 1999, under current hunting laws, according to court statistics, there were approximately 354 offenses, and approximately \$15,000 in revenue from fines was collected. According to Department of Correction reports, in 1999, there was 1 incarceration for violation of current hunting laws.

Enforcement of the changes in the hunting laws will be handled by Department of Environmental Protection Conservation Officers during the course of their routine duties.

House "A" makes a technical change and does not have a fiscal impact.

OLR Amended Bill Analysis

sHB 5059 (as amended by House "A")*

AN ACT CONCERNING HUNTING SAFETY.**SUMMARY:**

This bill creates the crimes of negligent hunting and hunting while under the influence or impaired. It imposes enhanced penalties for persistent offenders. It generally requires the person arrested for these crimes to surrender his weapon.

By law, a hunter whose license has been suspended for violation of hunting laws must complete a remedial hunter education course designed by the Department of Environmental Protection (DEP) before his license can be reinstated. The bill additionally requires the hunter to demonstrate that he has passed a conservation education/firearms safety course or its equivalent, as specified by DEP.

*House Amendment "A" broadened the definition of negligent hunting in the third degree.

EFFECTIVE DATE: October 1, 2000

NEGLIGENT HUNTING

The bill establishes four degrees of negligent hunting. Hunting is:

1. pursuing, shooting, killing, and capturing a bird, four-legged animal, or reptile, or trying to do these things, whether or not this results in taking the animal or
2. any act of assistance in taking or attempting to take such an animal.

The bill establishes, as *prima facie* evidence that someone was hunting, his possession of a loaded hunting weapon while at, entering, or leaving an area where a reasonable person would believe the objective was to take wildlife.

But, the bill allows a person to possess a loaded long gun one hour before sunrise during deer and turkey firearms season if it does not have a live round in it.

A loaded hunting weapon is:

1. a long gun with a live round in the chamber or in a magazine attached to the gun,
2. a muzzle-loaded gun with a percussion cap in place,
3. a flintlock firearm with powder in the pan,
4. a bow with an arrow notched on it,
5. a drawn crossbow with a bolt in place, or
6. a high velocity air gun charged with a projectile in the chamber or in an attached magazine.

First Degree

A person is guilty of negligent hunting in the first degree when, with criminal negligence, he shoots a loaded hunting weapon and kills someone while hunting. Criminal negligence means failing to perceive a substantial and unjustifiable risk that a result or circumstance described in a statute will occur.

Negligent hunting is a class D felony subject to imprisonment of one to five years, of which one year may not be suspended or reduced, a fine of up to \$5,000, or both. In addition, DEP can suspend the hunter's license indefinitely.

Second Degree

A person is guilty of this crime when, with criminal negligence, he (1) violates the law against jacklighting for deer or (2) shoots a loaded hunting weapon and causes serious physical injury to another person. A serious physical injury is one that creates a substantial risk of death or that causes serious (1) disfigurement, (2) impairment of health, or (3) loss or impairment of a bodily organ's function. The offense is a class A misdemeanor. The offender must be fined between \$400 and

\$2,000 and can be imprisoned for up to one year. In addition, DEP can suspend his license for up to 10 years.

Third Degree

A person is guilty of this crime if he, while hunting:

1. fires a loaded hunting weapon at a time of day when hunting is prohibited;
2. hunts on Sundays, or outside of hunting season;
3. shoots a firearm from a vehicle;
4. hunts with a suspended license; or
5. discharges a firearm into a building occupied by people or domestic animals or used to store flammable or combustible material.

This crime is a class B misdemeanor. The hunter must be fined \$200 to \$1,000 and can be imprisoned up to six months. In addition, DEP can suspend his license for up to five years.

Fourth Degree

A person is guilty of this crime if he, while hunting:

1. hunts without buying the license, permit, or stamp required by law;
2. possesses a loaded hunting weapon during a time of day when hunting is prohibited;
3. hunts from or fires a hunting weapon across a public highway.

A person is also guilty of this crime if he hunts with or fires a firearm within (1) 250 feet of building occupied by people or domestic animals or used to store flammable or combustible material or (2) 125 feet of any of these buildings while hunting in tidal water. This provision does not apply if the hunter is carrying the written authorization of the building's owner.

The crime is a class C misdemeanor punishable by imprisonment for up to three months, a fine of up to \$500, or both. In addition, DEP can suspend the hunter's license for up to three years.

Allocation of Fines

Under the bill, fines for first-and second-degree negligent hunting go to the Criminal Injuries Compensation Fund. Fines for third-and fourth-degree negligent hunting go to the Conservation Fund for land management or acquisition of hunting easements.

HUNTING WHILE UNDER THE INFLUENCE OR IMPAIRED

Elements of the Crime

The bill prohibits hunting while under the influence of or impaired by alcohol or drugs. A person is considered impaired if his blood alcohol content at the time of the offense was .07% to .10%. A person is considered under the influence if his blood alcohol content is above .10%. If he has been previously convicted of hunting under the influence the threshold is .07%. A person can also be found to be under the influence independent of his BAC.

The bill allows DEP enforcement officers to arrest people for this crime.

Alcohol Testing Procedures

The bill extends the laws regarding alcohol tests that currently apply to drunk boating to hunting while under the influence or while impaired. The law requires the arresting officer to determine whether to give a blood, breath, or urine test; if the person is unwilling or unable to submit to a blood test, the officer must designate a breath or urine test. If the person refuses to submit to the test, none is administered. The refusal to submit to a test is admissible in court if the person was (1) placed under arrest, (2) informed of his constitutional rights, (3) given an opportunity to call a lawyer, and (4) informed that refusal is admissible and can be used against him.

Admissibility of Test Results

As under the boating laws, the test results are admissible if:

1. the hunter was given a chance to call a lawyer and submitted to the test;
2. a true copy of the test result was mailed or delivered to the defendant within 24 hours or the end of the next business day after the result is known, whichever is later;
3. the test was performed by or at the direction of a law enforcement officer, using methods and equipment approved by the Department of Public Health (DPH);
4. the test was performed by a person certified for this purpose by DPH or recertified by a DPH-certified instructor;
5. any blood sample was taken by a medical professional with specified credentials;
6. the testing device was checked for accuracy by a DPH-certified person at the beginning and by the end of the workday; and
7. evidence is presented that demonstrates that the BAC at the time of the test accurately reflected the BAC at the time of the alleged offense.

In addition, a second test of the same type must be administered at least 30 minutes after the first test and the testing device was checked for accuracy by DPH-certified person. But the results of the first test can be admitted if reasonable efforts were made to conduct the second test even if the second test was not performed, was not performed within a reasonable time, or fails to meet the other criteria.

Penalties

Violation of the bill's drunk hunting provisions is a class A misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both. The fines go to the Criminal Injuries Compensation Fund. In addition, DEP can suspend the hunter's license indefinitely.

PERSISTENT OFFENDERS

Under the bill, a person convicted of (1) negligent hunting in the first, second, or third degree or (2) hunting while impaired or under the influence within five years of a conviction of negligent hunting is considered a persistent negligent hunter. A persistent negligent hunter must be fined at least twice the minimum provided for the second violation, that is, \$400 for a conviction of negligent hunting in third degree and \$800 for a conviction of negligent hunting in the second degree. The hunter is also subject to the penalties for the next, more serious degree of negligent hunting or hunting while impaired or under the influence. The provision has no effect with regard to the drunk hunting crimes, since they have only one degree and no minimum fine. It appears that any fine imposed on a persistent offender would go to the General Fund.

SURRENDER OF WEAPON

The bill requires anyone arrested for negligent hunting in the first, second, or third degree or hunting under the influence or impaired to surrender any weapon in his possession. The police or conservation officer must confiscate the weapon at the time of the arrest. If the hunter is acquitted or the charge is dismissed or nolle, the weapon must be returned in the same condition as when it was confiscated.

If the hunter is convicted, the weapon must be turned over to DEP. DEP can (1) retain the weapon for agency use; (2) convey it to the Department of Administrative Services for sale at auction, with the proceeds going to the Criminal Injuries Compensation Fund; or (3) destroy it.

These provisions do not apply to weapons used to jacklight deer, which are already subject to separate disposition procedures.

BACKGROUND

Legislative History

On April 11 the House referred this bill to the Finance, Revenue and Bonding Committee, which reported it unchanged on April 17.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference

Yea 14 Nay 5

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report

Yea 34 Nay 9